

## **COMPLETE THE TERMS**

In this case, an agent failed to include the complete terms and conditions of the real estate transaction in the contract. Make sure that property management agreements and offers to purchase are filled out and have processes by which agents' contracts are checked.

### **THE SITUATION:**

On May 10, 2008, Mr. Oscar Franz received his Real Estate salesperson license. He is licensed with Virginia Real Estate LLC.

On February 2, 2020, the Board received an email from Bethany Slavis, Managing Broker of Virginia Real Estate, LLC which stated that Mr. Franz failed to turn in an earnest money deposit ("EMD") within the required five business banking days of contract ratification.

### **THE INVESTIGATION:**

Investigators learned that on January 25, 2020, Rebecca Baker, as Buyer, entered into a Standard Contract for Purchase of 23012 Haverford Ave, Virginia Beach, Virginia. Virginia Real Estate LLC as the Selling Firm, and Mr. Franz as the Buyer's Agent, represented Ms. Baker.

On January 27, 2020, Mr. Franz received a check from Jump Business!, on behalf of Ms. Baker, in the amount of \$500, as the EMD for the 23012 Haverford Ave contract. On January 30, 2020, Mr. Franz submitted the EMD for the 23012 Haverford Ave contract to Virginia Real Estate LLC, and the EMD was deposited into the escrow account for Virginia Real Estate LLC.

On January 30, 2020, Ms. Baker, as buyer, entered into a Standard Contract for Purchase of 3412 Tennessee Street, Virginia Beach, Virginia. Virginia Real Estate LLC as the Selling Firm, and Mr. Franz as the buyer's agent, represented Ms. Baker.

Mr. Franz told investigators that on February 2, 2020, a Termination and Release Agreement for the 23012 Haverford Ave contract was prepared on Ms. Baker's behalf. The Release Agreement stated "the EMD is to remain at office for next contract per client's request." On this same date, Virginia Bank notified Amanda Williamson, Office Administrator for Virginia Real Estate LLC that the EMD for the 23012 Haverford Ave contract was returned, citing "not sufficient funds."

On February 2, 2020, Ms. Baker signed the Termination and Release Agreement, and on February 3, 2020, it was signed by the seller.

On February 23, 2020, the transaction for 3412 Tennessee Street closed.

The contract for 3412 Tennessee Street indicated the terms and conditions of the EMD as the following:

4. **DEPOSIT:** Purchaser shall make a deposit of \$500.00 to be held by Virginia Real Estate LLC (the "Escrow Agent") in the form of: ☐ check ☐ cash ☒ other money order (the "Deposit"). Purchaser **[select one]:** ☐ has paid the Deposit to the Escrow Agent OR ☐ will pay the Deposit to the Escrow Agent within 2 days (the "Extended Deposit Date") after the date this Contract is fully executed by the parties. If Purchaser fails to pay the Deposit as set forth herein, then Purchaser shall be in breach of this Contract. At Seller's option and in lieu of all other remedies set forth in this Contract, Seller may terminate this Contract by written notice to Purchaser and neither party shall have any further obligation hereunder.

Investigators noted the contract failed to indicate whether the escrow agent was in possession of the EMD at contract ratification.

**THE RESULT:**

The Board determined that Mr. Franz failed to include the complete terms and conditions of the real estate transaction by not indicating whether the escrow agent was in possession of the EMD. The Board issued a fine of \$300 and required Mr. Franz to complete two hours of Board-approved continuing education pertaining to real estate contracts.